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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16 v.
17 TREVOR JAMES KIRK,
18 Defendant.

Case No. 2:24-00527-SVW

GOVERNMENT'S SUPPLEMENTAL RESPONSE
TO ORDER OF MAY 6, 2025 (Dkt. 90)

[Fed. R. Crim. P. 48(a)]

DATE: May 19, 2025
TIME: 11:00 a.m.
PLACE: FSCH, Courtroom 10-A
EST: 20 minutes

1 **SUPPLEMENTAL POINTS AND AUTHORITIES**

2 Having done further legal research on the matter, the Government
3 submits the following additional citations in further response to the
4 Court's May 6, 2025 Order (CR 90):

5 1. Although Rule 48(a) refers only to dismissal of "an
6 indictment, information, or complaint" (i.e., the entire case), the
7 Ninth Circuit has held repeatedly that the rule also authorizes the
8 lesser power to dismiss particular counts of the indictment. See
9 United States v. Hector, 577 F.3d 1099, 1101-02 (9th Cir. 2009)
10 (collecting cases). Thus, under Rule 48(a), the Court has the still-
11 lesser power to strike part of a count.

12 2. In United States v. Weber, 721 F.2d 266 (9th Cir. 1983),
13 the Ninth Circuit held that the Government may dismiss a count
14 pursuant to Rule 48(a) in the interest of justice even after a
15 defendant has been convicted at trial. Id. at 268. In Weber, the
16 defendant was convicted by a jury at trial and then sentenced. Id.
17 at 267. While the case was on appeal, the Government developed
18 misgivings about the result based on further review of the case and
19 re-examination of the evidence. Id. Upon stipulation of Weber and
20 the Government, the Circuit dismissed the appeal so that the district
21 court could dismiss the indictment under Rule 48(a), but the district
22 court refused to dismiss. Id. The Circuit reinstated the appeal and
23 ordered the district court to dismiss the indictment. Id. at 268.

24 In so doing, the Circuit expressly rejected the notion that Rule
25 48(a) and related case law "did not apply to a motion filed after
26 conviction and sentencing," and held that it "applies regardless of
27 the stage of prosecution at which the Government moves to dismiss the
28 indictment." Id. at 269. The Circuit further explained that such

1 motions are essential to the Government's exercise of prosecutorial
2 discretion:

3 [I]t is the duty of the United States
4 Attorney not simply to prosecute, but to do
5 justice. In deciding whether to
6 initiate or terminate a prosecution, the
7 prosecutor has access to, and must take into
8 consideration, a wide range of information
9 that may not be competent evidence at trial.
10 It's no doubt this is part of the reason the
11 prosecutor must be given wide latitude in
12 making those decisions.

13 Id. at 268.

14 3. In United States v. Gonzalez, 58 F.3d 459 (9th Cir. 1995),
15 the Circuit reversed a district court's refusal to dismiss one count
16 of an indictment at sentencing. In Gonzalez, the defendant pleaded
17 guilty to two counts pursuant to a cooperation-plea agreement. Id.
18 at 460. At sentencing, the Government moved to dismiss one of those
19 counts because a conviction on that count would expose the defendant
20 to automatic removal from the United States, which was a risk not
21 disclosed to the defendant before he pleaded guilty to it. Id. The
22 district court refused to grant the motion based on the undisclosed
23 deportation risk. Id. Even though the defendant had already pleaded
24 guilty to the subject count, the Circuit directed the district court
25 to dismiss that count upon remand pursuant to Rule 48(a). Id. at
26 462, 464 ("Separation-of-powers concerns generally require a district
27 court to defer to the government's decision to seek a dismissal of a
28 criminal charge because a denial of the motion would represent an
intrusion upon prosecutorial prerogative.").

4. Finally, as an example of another case in which the
Government relied on Rule 48(a) in support of an uncontested motion
to strike a sentence-enhancing allegation from an indictment after

1 trial, please see United States v. Eric Schmidt, Case No. CR 22-174-
2 SB. In Schmidt, the Government indicted the defendant for Possession
3 with Intent to Distribute Fentanyl in violation of 21 U.S.C.
4 § 841(a)(1), and the indictment contained a special allegation that
5 the offense involved more than 400 grams of fentanyl, which triggered
6 the 10-year mandatory minimum sentencing provision in
7 § 841(b)(1)(A)(vi). (See Schmidt Docket, CR 16.) In November 2022,
8 the defendant was convicted by a jury after a two-day trial, and the
9 verdict contained a special finding that the offense involved more
10 than 400 grams of fentanyl. (Id., CR 61.) A short time later, DOJ
11 issued the Garland Memo, which is referenced in footnote 3 of the
12 Government's Sentencing Brief in this case. Pursuant to the Garland
13 Memo, the Government moved to strike the drug-quantity allegation
14 pursuant to Rule 48(a). (Id., CR 65.) The Court granted the motion
15 to dismiss/strike the increased penalty provision, 21 U.S.C.
16 § 841(b)(1)(A), from the indictment pursuant to Rule 48(a) and then
17 imposed a sentence well below 10 years. (Id., CR 70.)

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19 DATED: May 15 2025.

BILAL A. ESSAYLI
United States Attorney

20
21 /s/ R.J.K.

22 ROBERT J. KEENAN
Assistant United States Attorney

23 Attorneys for Plaintiff
24 UNITED STATES OF AMERICA
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CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of Orange County, California. I am over 18 years of age, and I am not a party to the above-entitled action. My business address is the United States Attorney's Office, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Suite 8000, Santa Ana, California 92701.

On this date, **May 15, 2025**, I served a copy of the attached document, **GOVERNMENT'S SUPPLEMENTAL RESPONSE TO ORDER OF MAY 6, 2025 (Dkt. 90)**, on the defendant's attorneys of record and the assigned U.S. Probation Officer by e-mailing it to the following e-mail address:

Edward M. Robinson --- eroblaw@gmail.com
Brian A. Robinson --- broblaw11@gmail.com
Tom Yu --- TYu@TomYuLaw.com

Shani_Kochav@cacp.uscourts.gov

I declare under penalty of perjury that the foregoing is true and correct. This declaration is executed on this day, **May 15, 2025**, at Santa Ana, California.

/s/ R.J.K.
Robert J. Keenan